

GOVERNMENT OF PUDUCHERRY

LABOUR DEPARTMENT

(G. O. Rt. No. 81/AIL/Lab./J/2010, dated 30th April 2010)

NOTIFICATION

Whereas, the Award in I. D No. 3/2008, dated 25-2-2010 of the Labour Court, Puducherry in respect of the industrial dispute between Somkan Staff Workers Union and the management of M/s. Somkan Marine Foods Limited, Yanam, over non-employment of Thiru K. Kodanda Ramu has been received;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947), read with the notification issued in Labour Department's G. O. Ms. No. 20/91/Lab./L, dated 23-5-1991, it is hereby directed by Secretary to Government (Labour) that the said Award shall be published in the official gazette, Puducherry.

(By order)

G. MALAR KANNAN,

Joint Secretary to Government (Labour).

**BEFORE THE LABOUR COURT (II ADDITIONAL
DISTRICT JUDGE) AT PONDICHERRY**

Present : Thiru E.M.K.S. SIDDHARTHAR, M.A., B.L.,
II Additional District Judge,
Presiding Officer, Labour Court,
Pondicherry.

Thursday, the 25th day of February 2010

I.D. No. 3/2008

M/s. Somkan Staff
and Workers Union, Yanam. . . Petitioner.

Versus

The Management of
M/s. Somkan Marine Foods Limited,
Adavipolam, Yanam. . . Respondent.

This industrial dispute coming on this day for hearing before me, in the presence of Thiru R. S. Zivanandam, Advocate for the petitioner, Thiruvalargal L. Satish, S. Duraisamy and C. Kalyanasoundaram, Advocates for the respondent, upon hearing both sides, after perusing the case records, this court passed the following :

ORDER

This industrial dispute has been referred to this court by the Government of Pondicherry, *vide* G. O. Rt. No. 7/2008/Lab./AIL/J, dated 25-1-2008 of the Labour Department, Pondicherry to resolve the following disputes:

(a) Whether the dispute raised by the management of M/s. Somkan Staff and Workers Union, Yanam against the management of M/s. Somkan Marine Foods Limited, Adavipolam, over non-employment of Thiru Kodamda Ramu, Lab. Assistant is justified or not?

(b) To what relief, he is entitled to?

(c) To compute the relief, if any, awarded in terms of money, if it can be so computed?

2. Today, the counsel for the petitioner made an endorsement stating that the petition is not pressed, since the petitioner could not be traced in spite of several reminders. The same is recorded. In view of the same, the industrial dispute is dismissed as not pressed.

Typed to my dictation, corrected and pronounced by me in the open court on this the 25th day of February, 2010.

E.M.K.S. SIDDHARTHAR,

II Additional District Judge,
Presiding Officer,
Labour Court, Pondicherry.

GOVERNMENT OF PUDUCHERRY

LABOUR DEPARTMENT

(G.O. Rt. No. 82/AIL/Lab./J/2010, dated 30th April 2010)

NOTIFICATION

Whereas, the Award in I. D No. 24/2007, dated 25-2-2010 of the Labour Court, Puducherry in respect of the industrial dispute between Thiru K. S. Chakravarthy, President of Somkan Staff and Workers Union and the management of M/s. Somkan Marine Foods Limited, Yanam, on the allegation of victimisation has been received;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947), read with the notification issued in Labour Department's G. O. Ms. No. 20/91/Lab./L, dated 23-5-1991, it is hereby directed by Secretary to Government (Labour) that the said Award shall be published in the official gazette, Puducherry.

(By order)

G. MALAR KANNAN,

Joint Secretary to Government (Labour).

**BEFORE THE LABOUR COURT (II ADDITIONAL
DISTRICT JUDGE) AT PONDICHERRY**

Present : Thiru E.M.K.S. SIDDHARTHAR, M.A., B.L.,
II Additional District Judge,
Presiding Officer, Labour Court,
Pondicherry.

Thursday, the 25th day of February 2010

I.D. No. 24/2007

The President of Somkan Staff
and Workers Union, Yanam . . . Petitioner.

Versus

The Management of
M/s. Somkan Marine Foods Limited,
Adavipolam, Yanam. . . Respondent.

This industrial dispute coming on this day for hearing before me, in the presence of Thiru R. S. Zivanandam, Advocate for the petitioner, Thiruvalargal L. Satish, S. Duraisamy and C. Kalyanasoundaram, Advocates for the respondent, upon hearing both sides, after perusing the case records, this court passed the following:

ORDER

This industrial dispute has been referred to this court by the Government of Pondicherry, *vide* G. O. Rt. No. 92/2007/Lab./AIL/J, dated 19-4-2007 of the Labour Department, Pondicherry to resolve the following disputes:

(a) Whether Thiru K. S. Chakravarthy, Premix Supervisor (Incharge), President of Somkan Staff and Workers Union (Registered No. 1444/RTU/2006), Yanam is a workman?

(b) If so, whether the dispute raised by Thiru K. S. Chakravarthy, President of Somkan Staff and Workers Union over the suspension and victimisation against the management of M/s. Somkan Marine Foods Limited, Adavipolam, Yanam is justified?

(c) If not to what relief, he is entitled?

(d) To compute the relief, if any, awarded in terms of money, if it can be so computed?

2. Today, the counsel for the petitioner made an endorsement stating that the petition is not pressed, since the petitioner could not be traced in spite of several reminders. The same is recorded and in view of the same, the industrial dispute is dismissed as not pressed.

Typed to my dictation, corrected and pronounced by me in the open court, on this the 25th day of February, 2010.

E.M.K.S. SIDDHARTHAR,
II Additional District Judge,
Presiding Officer,
Labour Court, Pondicherry.

**GOVERNMENT OF PUDUCHERRY
LABOUR DEPARTMENT**

(G.O. Rt. No. 83/AIL/Lab./J/2010, dated 3rd May 2010)

NOTIFICATION

Whereas, the Award in I.D. No.5/2005, dated 2-3-2010 of the Labour Court, Puducherry in respect of the industrial dispute between the management of M/s. Pondicherry Co-operative Sugar Mills Limited, Pondicherry and Puducherry Pradesh Co-operative Sugar Mills Thozhilalar Sangam (CITU) over regularisation of 2 seasonal workers *viz.*, R. Muthusamy and G. Rajamurthy has been received;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947) read with the notification issued in Labour Department's G. O. Ms. No. 20/91/Lab./L, dated 23-5-1991, it is hereby directed by Secretary to Government (Labour) that the said Award shall be published in the official gazette, Puducherry.

(By order)

G. MALAR KANNAN,
Joint Secretary to Government (Labour).

BEFORE THE LABOUR COURT AT PONDICHERRY

Present : Thiru E.M.K.S. SIDDHARTHAR, M.A., B.L.,
II Additional District Judge,
Presiding Officer, Labour Court.

Tuesday, the 2nd day of March 2010

I.D. No. 5/2005

The President,
Puduvai Pradesh Co-operative Sugar
Mill Thozhilalar Sangam (CITU),
Pondicherry.

. . . Petitioner

Versus

The Managing Director,
Pondicherry Co-operative
Sugar Mills Limited,
Lingareddipalayam, Pondicherry.

. . . Respondent

This industrial dispute coming on 25-2-2010 for final hearing before me in the presence of Thiru Durai Arumugam, appearing for the petitioner, Thiru K. Palaniappaan, Advocate for the respondent, upon hearing both sides, upon perusing the case records, after having stood over for consideration till this day, this court passed the following:

AWARD

This industrial dispute arises out of the reference made by the Labour Department, Government of Pondicherry *vide* G.O. Rt. No.157/2004/Lab./J, dated 20-12-2004 for adjudication of the following industrial dispute that arose between the management of Pondicherry Co-operative Sugar Mills Limited and Pudukkottai Pradesh Co-operative Sugar Mill Thozhilalar Sangam for regularisation of two seasonal workers namely R. Muthusamy and G. Rajamurthy:

(a) Whether the demand of Pudukkottai Pradesh Co-operative Sugar Mill Thozhilalar Sangam for regularisation of two workmen by name R. Muthusamy and G. Rajamurthy by the management of M/s. Pondicherry Co-operative Sugar Mills Limited, is justified?

(b) To compute the relief, the said workmen are entitled to.

(c) To compute the relief, if any, awarded in terms of money if it can be so computed.

2. The petitioner in his claim statement has averred as follows:

The respondent factory had been functioning for the past 22 years and in the said industry, 55% of the employees are seasonal employees. The petitioner workmen by name 1. R. Muthusamy (Pan Man T. No.68) and 2. G. Rajamurthy (Assistant Pan Man T. No.67) had been continuously working as seasonal employees. One K. Nagabhooshanam (Pan Man T No.47), who was working as seasonal employee, was regularised by the respondent factory on 22-9-2003. The said Nagabhooshanam is junior to the petitioner workmen. Hence, the petitioner prayed to regularise the said petitioner workmen with attendant benefits.

3. In the counter statement filed by the respondent, it is contended that the employee Rajamurthy, who was initially appointed as Assistant Pan Man continues to work till date in the same post. The employee Muthusamy was initially appointed as Assistant Pan Man, a post belonging to seasonal category and later on, he was promoted as Pan Man, which is again a seasonal post. The employees appointed to the post of seasonal

category cannot be made as regular employees as the very nature of the post would not permit such an adoption on regular basis. In the case of Nagabhooshanam, while he was appointed as Centrifugal Mate, having regard to his past service in other sugar factories, he was appointed on regular basis as he was not inclined to accept the offer of appointment under seasonal category. Therefore, when he was promoted as Pan Man on seasonal basis as the said post was seasonal one, he challenged such a promotion on seasonal basis by raising dispute on the ground that his promotion was against the spirit and terms of the original appointment and therefore, this court directed the respondent to treat the promotion to the post of Pan Man on regular basis. Hence, he prays for dismissal of the dispute.

4. *The point for determination is:*

Whether the petitioners workmen namely 1. R. Muthusamy and 2. G. Rajamurthy can be regularised?

5. *On the point:*

The contention of the petitioner is that the workmen namely 1. Rajamurthy had been working as Assistant Pan Man and 2. Muthusamy had been working as Pan Man in the respondent company for the past 22 years. In order to prove the said contention, the petitioner has marked Ex.A1 Appointment order of Muthusamy and Ex.A2 Appointment order of Rajamurthy. Ex.A1 would reveal that R. Muthusamy was appointed as Pan Man (Seasonal) in the respondent factory on 17-1-1986 and Ex.A2 would reveal that G. Rajamurthy was appointed as Assistant Pan Man (Seasonal) in the respondent factory on 6-1-1984.

6. The contention of the respondent is that the employees appointed to the post of seasonal category cannot be made as regular employees, as the nature of the post would not permit such an adoption on regular basis. But on the side of the petitioner, the judgment, dated 29-12-1997 passed by my learned predecessor was marked as Ex.A3 and pointed out that this court directed the respondent factory to regularise the seasonal worker by name Nagabhooshanam. Ex.A3 would confirm the said fact. Further the respondent has also admitted the said fact in his counter.

7. In this case, the petitioner workmen by name R. Muthusamy joined the service as Pan Man (Seasonal) on 17-1-1986 and G. Rajamurthy as Assistant Pan Man (Seasonal) on 6-1-1984 in the respondent factory and they were continuously engaged by the respondent factory and there was no break in service, as admitted by the respondent. In fact, the said workmen have also

attained all the qualifications necessary for according permanency by way of regularisation in accordance with standing order of the respondent factory. When there was no complaint of misconduct and irregular in service and when they are in continuous service, it is the duty of the respondent to regularise them. The contention of the respondent that the regularisation of the petitioner workmen could not be sustained, since the post of seasonal category cannot be made as regular employees. Further the respondent after utilising the services of the petitioner workmen, who have been employed for the past twenty years, cannot now say that they could not be regularised by taking shelter that the seasonal employees cannot be regularised. The respondent could not say under what provision the seasonal employees cannot be regularised. Further the respondent has admitted that as per the direction of this court, the respondent factory regularised one seasonal employee by name Nagabhooshanam.

8. The non-conferment of the regular status is only to ruse adopted by the respondent management with an ulterior motive to deny the other benefits that would accrued on the workmen consequent to the regularisation of their regular service. This attitude and practice followed by the respondent are clearly an unfair trade practice and violative of labour laws.

9. It is further unfortunate that the petitioner workmen have been kept as Seasonal Employees for more than twenty years, which is against law. When the services of the petitioner workmen are required on a permanent basis, nothing can stand in the way of regularisation of their services. The refusal of regularisation by the respondent is shocking and it is definitely violative of law by the respondent. When there are vacancies, the seasonal employees are entitled to be absorbed. In this case, despite availability of work, the petitioner workmen are being utilised, for the work of permanent nature. They cannot now be denied regularisation on the ground of seasonal employees, who cannot be regularised. In spite of fact that the said workmen are performing regular duties throughout the year and the nature of their job being perennial, it was unjust on the part of the respondent to keep them on seasonal employees without any regularisation. Hence, I am inclined to hold that the claim of the petitioner for regularisation of the abovesaid two workmen is reasonable. Accordingly, this point is answered in favour of the petitioner.

10. In the result, this industrial dispute is allowed and the respondent is hereby directed to regularise the service of the petitioner workmen namely 1. R. Muthusamy and 2. G. Rajamurthy immediately with

other attendant benefits as applicable to them as per labour rules. However in the circumstances of the case, there is no order as to costs.

Typed to my dictation, corrected and pronounced by me in the open court on this the 2nd day of March 2010.

E.M.K.S. SIDDHARTHAR,
II Additional District Judge,
Presiding Officer,
Labour Court, Pondicherry.

List of witnesses examined for the petitioner : Nil

List of witnesses examined for the respondent : Nil

List of exhibits marked for the petitioner :

- Ex.A1 — Offer of Appointment of R. Muthusamy
- Ex.A2 — Offer of Appointment of G. Rajamurthy
- Ex.A3 — Copy of the Judgment in I.D. No.32/93, dated 29-12-1997.

List of exhibits marked on the side of respondent :

- Ex.R1 — Offer of appointment of Nagabhooshnam, dated 28-11-1983.

E.M.K.S. SIDDHARTHAR,
II Additional District Judge,
Presiding Officer,
Labour Court, Pondicherry.

**GOVERNMENT OF PUDUCHERRY
LABOUR DEPARTMENT**

(G. O. Rt. No. 84/AIL/Lab./J/2010, dated 3rd May 2010)

NOTIFICATION

Whereas, the Award in I.D. No.18/2005, dated 10-2-2010 of the Labour Court, Puducherry in respect of the industrial dispute between the management of M/s. Honda Siel Power Products Limited, Puducherry and Honda Power Products Pattali Labour Union over non-employment of Thiru T. Asokan has been received;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947), read with the notification issued in Labour Department's G. O. Ms.No.20/91/Lab./L, dated 23-5-1991, it is hereby directed by Secretary to Government (Labour) that the said Award shall be published in the official gazette, Puducherry.

(By order)

G. MALAR KANNAN,
Joint Secretary to Government (Labour).

BEFORE THE LABOUR COURT AT PONDICHERRY

Present : Thiru E.M.K.S. SIDDHARTHAR, M.A., B.L.,
 II Additional District Judge,
 Presiding Officer, Labour Court,
 Pondicherry.

Wednesday, the 10th day of February 2010

I.D. No. 18/2005

The Secretary,
 Honda Power Products
 Pattali Labour Union, Sedarapet,
 Pondicherry.

.. Petitioner

Versus

The Managing Director,
 Honda Siel Power Products Limited,
 Sedarapet, Pondicherry.

.. Respondent

This industrial dispute coming on 4-2-2010 for final hearing before me in the presence of Thiru Durai Arumugam, appearing for the petitioner, Thiruvalargal K. Babu and C. Arivajagane, Advocates for the respondent, upon hearing both sides, upon perusing the case records, after having stood over for consideration till this day, this court passed the following:

AWARD

This industrial dispute arises out of the reference made by the Labour Department, Government of Pondicherry *vide* G. O. Rt. No.15/2005/Lab./AIL/J, dated 9-2-2005 for adjudication of the following industrial dispute that arose between the management of M/s. Honda Siel Power Products Limited, Pondicherry and Honda Power Products Pattali Labour Union, Pondicherry over non-employment of Thiru T. Asokan:

(a) Whether the non-employment of Thiru T. Asokan by the management of M/s. Honda Siel Power Products Limited, Sedarapet is justified?

(b) To what relief, he is entitled to?

(c) To compute the relief, if any, awarded in terms of money, if it can be so computed?

2. The petitioner in his claim statement has averred as follows:—

The member of the petitioner union namely-T. Asokan has worked with the respondent's company from 2-4-2001 and he was terminated by the respondent contrary to the Model Standing Orders from 20-8-2003 and had sent full and final settlement letter, dated 22-8-2003. The said Asokan

had returned the said full and final settlement letter to the respondent management along with the cheque on 1-9-2003. The petitioner union had also sent representation to the management in this regard and had raised a dispute before the Labour Officer (Conciliation) on 9-9-2003 and the Labour Officer (Conciliation) had called for an enquiry on 10-11-2003 and on the said date, the Labour Officer (Conciliation) had closed file after enquiry. Then upon oral advice of the Labour Officer (Conciliation), it had made representation before the Labour Commissioner on 31-12-2003 and after repeated reminders, the Deputy Labour Commissioner had called for an enquiry, wherein the management had appeared and submitted its reply *vide* letter, dated 17-6-2004 for which the petitioner union had submitted its counter statement, dated 8-7-2004. The Labour Commissioner, after understanding the justification in the counter statement filed by the petitioner union, had pointed out in his failure report that whether a person, who has worked for two years and four months of uninterrupted service can be terminated without any domestic enquiry has to be decided by the court and had recommended for judicial adjudication. The action of the respondent management in terminating the services of T. Asokan without issuing any charge sheet or conducting domestic enquiry is invalid. Hence, he prayed for setting aside the termination order and to award back wages with continuity of service and other benefits.

3. In the counter statement filed by the respondent, it is contended that the claim statement furnished to the respondent had not revealed the name of the person, who had verified and signed the claim statement and had not even revealed the name of its Secretary, who purports to be the petitioner. As on date of filing claim statement, the alleged Honda Power Products Pattali Labour Union was not in existence and as such the filing of claim statement in the name of such non-existing union does not have any validity and no person can sign the claim statement stating that he is Secretary of such non-existing union which is *void* and illegal.

The said T. Asokan was engaged as a Casual Employee from 2-4-2001. Thereafter he was absorbed as a Trainee in the respondent's organisation with effect from 21-1-2002 *vide* letter, dated 17-1-2002 for traineeship for a period of one year, the terms and conditions of which were accepted by him. After the said period, though the performance of Asokan was judged inadequate, the respondent management showed some fairness and leniency and placed him on probation with effect from 21-1-2003 for a period of one year to judge

his performance of work and conduct *vide* letter, dated 25-1-2003. Even during the period of probation, it was found that the said Asokan required more guidance and support to attain the satisfactory level of work and progress which is vital and necessary for job. Since the petitioner had not shown any interest in learning the job, the management was constrained to terminate his probation *vide* its letter, dated 20-8-2003. Since as on date of termination, the said Asokan was only a 'Probationer' and as no stigma had been caste upon him, issuance of show cause notice or conducting of domestic enquiry does not arise. The termination of the said Asokan is purely on his poor and ill-performance in work and hence the order of termination of Asokan is just and valid in law. Hence, he prays for dismissal of the petition.

4. *The point for determination is:*

Whether the petitioner can be considered for reinstatement in service with accrued benefits?

5. *On the point:*

The case of the petitioners is that the respondent management having extracted work from them as casual worker continuously on par with regular workers, took a plea as though the petitioners were trainees and abruptly made the petitioner to face non-employment. *Per contra* the respondent would state that the petitioners had taken voluntary training under the respondent without any promise for regular employment in the respondent company and also the petitioner evinced lack of efficiency during training period and by way of an after-thought they have chosen to raise this industrial dispute. On the side of the respondent, the offer of employment as trainee issued to the petitioner workman was marked as Ex.R1 and the Order of Probationary issued to the said Asokan was marked as Ex.R3. In those offers, the petitioner's applications are referred to. One important fact that should be taken into consideration is that the respondent management itself candidly admitted in their counter that the petitioner was already working in the respondent company as casual labour from 2-4-2001. It is therefore amply clear that the petitioner was working in the respondent company prior to him having been labelled as trainee unilaterally under the respondent factory.

6. The next question arises as to whether the respondent management in such an eventuality was justified in appointing the casual labours within the meaning of section 25-B to take training. The answer is obvious. The respondent was not justified in treating him as mere trainee subsequently and after two years terminating him from the service without any notice. In such a case, the petitioner is right in describing the conduct of the management as one against the labour laws.

7. The learned counsel for the respondent argued owing to inefficiency of the petitioner workman, he was terminated from the service. Such an argument cannot be countenanced for the reason that the said workman could not be treated as trainee and as the said Asokan had worked for more than 240 days and termination of his service being contrary to the provisions of section 25-F of Industrial Disputes Act is bad. The learned counsel for the respondent would argue that the respondent management cannot be forced to select inefficient workers. Here, the point is that the respondent management already extracted work from the said workman Asokan as casual workers and then as trainees and in such a case, unilaterally, the respondent management cannot label them as inefficient persons and make him to face non-employment.

8. The learned counsel for the respondent would argue that during the period of training and probation, the management was not satisfied with the conduct, behaviour and performance and hence the services of the said Asokan were terminated and pointed out the following decisions:—

1. 2002 III LLJ Page 29

Manipal Academy of Higher Education and Another *Versus* R. Swaminathan and another:

"That the words "during this period" therein meant that during probation period if the work and conduct of the respondents were found satisfactory, they would be confirmed, otherwise their services were liable to be terminated".

2. 2001 II LLJ Page 44 (Rajasthan)

Murari Lal Sharma *Versus* State Bank of India:

"Employer has every authority to terminate probationer's services if probationer's services found not satisfactory".

In order to prove his claim, the respondent has marked Ex.R6, copy of the letter written by one J. Iyyappan, the Security of the respondent company complaining the act of the said Asokan and Ex.R7, letter written by one Vasudevan, Personnel Officer of the respondent company. Ex.R6 and Ex.R7 would reveal that the petitioner workman T. Asokan has taken the time punching card of one Somu, Operator and punched on behalf of the said Somu at 8.46 a.m. But the said Iyyappan and Vasudevan have not been examined as witnesses before this court. The foundation of the order of termination was on the complaints alleged to have been made against the workman by the Security and the Personnel Officer of the respondent company and therefore before the order of termination could be

passed, the opportunity to defend himself ought to have been afforded to the petitioner workman by the employer and since it was not done, the order is bad in law. Further Ex.R6 and Ex.R7 do not reveal anything in respect of the aspect of inefficiency on the part of the petitioner workman as alleged in the counter, but they related to some other complaint of misconduct. Whatever it may be, the misconduct is alleged, it is the principle of law to hold enquiry and after due opportunity to the charged employee, the action is taken. In this case, it has not been done.

9. The petitioner has argued that the action of the respondent management in terminating the services of T. Ashokan without issuing any charge sheet or conducting domestic enquiry is invalid and against the natural justice. On the other hand, the learned counsel for the respondent would argue that the termination order passed upon a probationer without any formal departmental enquiry or without any preliminary fact finding enquiry is not illegal and relied upon the following citations:—

1. 2002 II LLJ Page 813 (Supreme Court)

Shailaja Shivajirao Patil *Versus* President Hon. Khasdar UGS Sanstha and others:

Service terminated during probationary period for unsatisfactory service - Show cause notice issued but no full fledged enquiry held - Held, mere ordering of enquiry does not make termination penal or stigmatic.

2. 2001 I LLJ Page 1346 (Supreme Court):

Kalyani Sharp India Limited, *Versus* Labour Court No.1, Gwalior and another:

Terms of employment stipulating right to terminate training without assigning reason - Termination of service before expiry of probation period - In such circumstances issue of notice before terminating service, held did not arise.

3. AIR 2005 S.C. Page 2960:

State of Punjab and others *Versus* Sukhwinder Singh:

“Probationer - Termination of service - Ground of absence from duty - Order passed without any formal departmental inquiry or any preliminary fact finding inquiry - Not illegal.”

4. 2005 STPL (LE) 34919 SC:

Rajasthan State Road Transport Corporation And others *Versus* Zakir Hussain:

“Probationer-Termination simpliciter-Whether inquiry necessary-Respondent was appointed on probation and the services were terminated during the period

of probation simpliciter as the same were not found to be satisfactory - Held that the appellant Corporation is not obliged to hold an enquiry before terminating the services”.

10. As per Ex.R1. the respondent company offered training to the petitioner workman T. Asokan on 17-1-2002 and as per Ex.R2, the said workman was appointed as Operator on 25-1-2003. Further as admitted by both parties, before 17-1-2002 in which date the petitioner workman was given training by the respondent management, he was working as Casual Labour from 2-4-2001. Hence, the petitioner workman was working in the respondent company for more than 2½ years without any interruption. Hence, it was necessary to have given opportunity to the workman before coming to the conclusion that he was not found suitable or fit for being continued in service. Neither no such opportunity was given to the petitioner workman, nor principles of natural justice have been complied with. Therefore, the termination of service of the workman was bad. The decisions cited by the learned counsel for the respondent are not applicable to the present facts and circumstances of the case. Accordingly, this point is answered.

11. In the result, the industrial dispute is allowed and the award is passed to the effect that the non-employment of the petitioner workman T. Asokan and his dismissal from service is unjustified and is illegal and therefore it is hereby *set aside*. The respondent company/management shall reinstate the said T. Asokan with effect from 20-8-2003 with full back wages and with continuity of service and other attendant benefits as applicable to him as per labour laws. However in the circumstances of the case, there is no order as to costs.

Typed to my dictation, corrected and pronounced by me in the open court, on this the 10th day of February 2010.

E.M.K.S. SIDDHARTHAR,
II Additional District Judge,
Presiding Officer,
Labour Court, Pondicherry.

List of witnesses examined for the petitioner :

PW1 24-12-2009 - T. Asokan

List of witnesses examined for the respondent : Nil

List of exhibits marked for the petitioner :

Ex.A1 Copy of the termination letter, dated 20-8-2003.

Ex.A2 Copy of the letter, dated 25-8-2003 sent by the Asokan to the respondent company.

- Ex.A3 Copy of the letter sent by Asokan to the respondent company.
- Ex.A4 Copy of the letter, dated 1-9-2003 sent by the petitioner union.
- Ex.A5 Copy of the letter, dated 29-10-2003 sent to the Secretary of the Respondent company by the Labour Officer.
- Ex.A6 Copy of the letter, dated 31-12-2003 sent by the petitioner union to the Labour Officer.
- Ex. A7 Copy of the letter, dated 12-4-2004 sent by the petitioner union to the Labour Officer.
- Ex.A8 Copy of the letter, dated 25-5-2004 sent by the Deputy Commissioner to the respondent company.
- Ex.A9 Copy of the letter, dated 17-6-2004 sent by the respondent company to the Deputy Commissioner.
- Ex.A10 Copy of the letter, dated 8-7-2004 sent by the petitioner union to Deputy Commissioner.
- Ex.A11 Copy of the letter, dated 22-9-2004 sent by the Chief Conciliation Officer to the Secretary to Government (Labour).
- Ex.A12 Judgments delivered by the Labour Court, Pondicherry.

List of exhibits marked on the side of respondent:

- Ex.R1 Copy of training order issued to the petitioner workman, dated 17-1-2002.
- Ex.R2 Apology letter given by T. Asokan, dated 3-10-2002.
- Ex.R3 Copy of probationary order issued to Asokan dated 25-1-2003.
- Ex.R4 Letter dated 2-8-2003 given by Asokan
- Ex.R5 Copy of experience certificate issued to Asokan, dated 13-8-2003.
- Ex.R6 Copy of letter by Security J. Iyyappan, dated 20-8-2003.
- Ex.R7 Copy of letter by D. Vasudevan, dated 20-8-2003.
- Ex.R8 Copy of apology letter given by Asokan, dated 20-8-2003.
- Ex.R9 Copy of letter of termination issued to Asokan, dated 20-8-2003.
- Ex.R10 Copy of full and final settlement sent to Asokan, dated 22-8-2003.

- Ex.R11 Acknowledgment card signed by Asokan
- Ex.R12 Copy of letter by Asokan, dated 25-8-2003.
- Ex.R13 Letter dated 1-9-2003 by Asokan
- Ex.R14 Copy of the letter by the petitioner union workman, dated 1-9-2003.
- Ex.R15 Copy of the letter by the petitioner union, dated 9-9-2003.
- Ex.R16 Copy of the voucher for receipt of bonus, dated 20-11-2003.
- Ex.R17 Copy of the letter by the petitioner union, dated 12-4-2004.
- Ex.R18 Copy of the letter by the respondent management, dated 30-5-2004.
- Ex.R19 Copy of the letter by the respondent management, dated 17-6-2004.
- Ex.R20 Copy of the letter by the petitioner union, dated 8-7-2004.
- Ex.R21 Conciliation Officer Report, dated 22-9-2004.
- Ex.R22 Notification issued by Additional Secretary to Government, dated 9-2-2005.
- Ex.R23 Copy of the letter, dated 14-12-2004 by Puduvai Manila Pattali Thozhilalargal Sangam.
- Ex.R24 Copy of the letter by Honda Power Products Thozhilalargal Sangam issued to respondent management, dated 24-12-2004.
- Ex.R25 Copy of minutes of the meeting held on 22-2-2005 of respondent company.
- Ex.R26 Copy of Memorandum of Settlement.
- Ex.R27 Copy of the letter, dated 11-9-2007 by the petitioner's union.
- Ex.R28 Copy of the letter, dated 15-4-2004 by Powertech Constructions.
- Ex.R29 Copy of the letter, dated 1-2-2006 by Shardlow India Limited.
- Ex.R30 Copy of the Provisional National Apprenticeship certificate issued to Asokan.
- Ex.R31 Copy of curriculum vitae, dated 9-2-2007

E.M.K.S. SIDDHARTHAR,
II Additional District Judge,
Presiding Officer,
Labour Court, Pondicherry

GOVERNMENT OF PUDUCHERRY

LABOUR DEPARTMENT

(G.O. Rt. No. 85/AIL/Lab./J/2010, dated 5th May 2010)

NOTIFICATION

Whereas, the Award in I.D. No.36/2003, dated 25-2-2010 of the Labour Court, Puducherry in respect of the industrial dispute between the management of M/s. Sathyalayam Printers, Puducherry and its workman Thiru K. Pavadai over non-employment has been received;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947), read with the notification issued in Labour Department's G. O. Ms. No. 20/91/Lab./L, dated 23-5-1991, it is hereby directed by Secretary to Government (Labour) that the said Award shall be published in the official gazette, Puducherry.

(By order)

G. MALAR KANNAN,

Joint Secretary to Government (Labour).

BEFORE THE LABOUR COURT AT PONDICHERRY

Present : Thiru E.M.K.S. SIDDHARTHAR, M.A., B.L.,
II Additional District Judge,
Presiding Officer, Labour Court,
Pondicherry.

*Thursday, the 25th day of February 2010.***I.D. No. 36/2003**

K. Pavadai . . . Petitioner.
Versus

The General Manager,
Sathyalayam Printers,
Pondicherry . . . Respondent.

This industrial dispute coming on 9-2-2010 for final hearing before me in the presence of Thiru R.S. Zivanandam, Counsel for the petitioner, Thiru J. Cyril Mathias Vincent, Advocate for the respondent, upon hearing both sides, upon perusing the case records, after having stood over for consideration till this day, this court passed the following:

AWARD

This industrial dispute arises out of the reference made by the Labour Department, Government of Pondicherry *vide* G.O. Rt. No.161/2003/Lab./J.

dated 15-12-2003 for adjudication of the following industrial dispute that arose between the management of M/s. Sathyalayam Printers, Pondicherry and Thiru K. Pavadai. the petitioner herein, over his non-employment:

(a) Whether the non-employment of Thiru K. Pavadai is justified or not?

(b) To what relief, he is entitled to?

(c) To compute the relief, if any, awarded in terms of money, if it can be so computed?

2. The petitioner in his claim statement has averred as follows:

The petitioner joined in the respondent's printing press as Compositor on 1-1-1987. During his service, he discharged his duties diligently and satisfactorily as per the directions of the respondent. There was no misunderstanding between the petitioner and the respondent during the entire service period. On 15-9-2002 when the petitioner was entering into the premises of his workplace, he was restrained by the respondent and issued a termination order orally and asked the petitioner to go out the place without assigning any reason. Several times the petitioner approached the respondent and asked the reason for his termination. Since the respondent failed to answer the reasonable demand of the petitioner, the petitioner approached the Labour Officer (Conciliations) through the demand letter, dated 21-10-2002. Notice was issued to the respondent through the Conciliation Officer. Even in spite of protracted proceedings held before the Conciliation Officer, the dispute was not ended and it was failed. Hence, a report was sent by the Labour Officer to the Labour Commissioner, Labour Department, Pondicherry. Then the government has notified the reference of the dispute through its letter, dated 16-12-2003.

The petitioner was worked for more than five years from 1987 and it seems to be above 15½ years of service and hence he is entitled to payment of gratuity and retrenchment compensation. Any termination on the side of the respondent without written notice and without any departmental enquiry regarding any difference of which the petitioner was terminated from his service has to be mentioned otherwise, any kind of termination is deemed to be a retrenchment alone as per the Industrial Disputes Act, and hence the petitioner is entitled for monetary relief, which is in the following heads:—

1. Payment of gratuity : Rs. 15,691.20
2. Retrenchment compensation : Rs. 15,691.20
3. Payment of bonus : Rs. 3,400
4. Withheld salary : Rs. 915.28

3. In the counter statement filed by the respondent, it is contended that the petitioner started his employment on 2-9-2002 as a Compositor with the respondent printing press. However, on the very first day of his employment, the petitioner came one hour late, which was pointed out by the respondent. Subsequently the petitioner worked for three consecutive days and thereafter failed to report for duty on the fourth day without prior intimation. However, he came for work on the fifth day by giving a lame excuse that he was sick the previous day. Then the petitioner worked for a week. The petitioner worked till 13-9-2002 and subsequently did not report for work. He received an advance of Rs.500 on 13-9-2002 and voluntarily stopped reporting for work. The respondent came to know subsequently that the petitioner had sought employment and was working in a different printing press. During his brief stint as a Compositor, the performance of the petitioner was a below average. Since the petitioner voluntarily stopped and failed to report for his duty, there was no necessity for termination, assigning reasons or written notice and to conduct any enquiry. It is false that the petitioner was continuously in service for more than five years. The respondent printing press is not an industry and has no statutory obligation to pay gratuity, retrenchment compensation, bonus or other statutory benefits and in any event the claim of the petitioner is time barred. Hence, he prays for dismissal of the petition.

5. During enquiry, no witness was examined on the side of the petitioner and Ex.A1 to Ex.A4 were marked by consent. On the side of the respondent, neither oral nor documentary evidence was adduced.

4. *The point for determination is:*

Whether the petitioner is entitled to get the order as prayed for?

5. *On the point:*

The contention of the petitioner is that he was working as Compositor in the respondent printing press from 1-1-1987 and he was terminated by the respondent from 15-9-2002 without any reason.

6. *Per contra*, the contention of the respondent, the petitioner started his employment from 2-9-2002 as Compositor and since he was irregular in attending the duty and the petitioner worked till 13-9-2002 and subsequently he did not report for work and that his total period of employment with the respondent was only for ten days.

7. In order to prove his case, the petitioner has marked Ex.A1 failure report of Conciliation Officer, Ex.A2 Gazette notification, Ex.A3 letter dated 21-10-2002 sent by the petitioner to the Conciliation Officer and

Ex.A4 ESI slip of the petitioner. In order to prove that the petitioner worked under the respondent from 1-1-1987, there is no document filed on the side of the petitioner. On the side of the respondent also, no evidence or documents were marked in this regard. Without producing the appointment order, this court is not able to know the date of appointment of the petitioner in the respondent company. But perusal of Ex.A4 would reveal that he joined as a member in ESI Corporation on 1-10-1990. Hence, based on Ex.A4 this court comes to the conclusion that the petitioner worked under the respondent from 1-10-1990. Therefore the contention of the respondent that the petitioner started his employment from 2-9-2002 and worked till 13-9-2002 and that his total period of employment with the respondent was only for ten days, is false.

8. Further the contention of the respondent is that the petitioner was irregular in attending his duty, on the very first day, the petitioner came one hour late and subsequently the petitioner worked for three consecutive days and thereafter failed to report for duty on the fourth day and he worked till 13-9-2002 and subsequently he did not report for work. Though the respondent has filed the counter, he has not examined any and marked any documents to prove his contention. Further there is no notice issued or domestic enquiry conducted by the respondent prior to termination of the petitioner. Without giving opportunity to the petitioner, the respondent has terminated him from service, which is against the natural justice. Hence, considering the available documents on records, this court has come to the conclusion that the petitioner worked in the respondent printing press from 1-10-1990 till 13-9-2002 and accordingly, the petitioner is entitled to get the monetary benefits for the said period. This point is answered accordingly.

9. In the result, the industrial dispute is allowed and the award is passed to the effect that the non-employment of the petitioner workman and his dismissal from service is unjustified and is illegal. The respondent is directed to give the monetary benefits, such as payment of gratuity, retrenchment compensation, payment of bonus and withheld salary, if any, to the petitioner as applicable to him as per labour rules. However, in the circumstances of the case, there is no order as to costs.

Typed to my dictation, corrected and pronounced by me in the open court, on this the 25th day of February, 2010.

E.M.K.S. SIDDHARTHAR,
II Additional District Judge,
Presiding Officer,
Labour Court, Pondicherry.

List of witnesses examined for the petitioner : Nil.

List of witnesses examined for the respondent : Nil.

List of exhibits marked for the petitioner:

Ex.A1— Failure Report of Conciliation Officer, dated 9-5-2003.

Ex.A2— Gazette notification, dated 16-12-2003.

Ex.A3— Letter, dated 21-10-2002 sent by the petitioner to the Conciliation Officer.

Ex.A4— ESI slip of the petitioner, dated 1-10-1990.

E.M.K.S. SIDDHARTHAR,
II Additional District Judge,
Presiding Officer,
Labour Court, Pondicherry.

**GOVERNMENT OF PUDUCHERRY
LABOUR DEPARTMENT**

(G.O. Rt. No. 86/AIL/Lab./J/2010, dated 5th May 2010)

NOTIFICATION

Whereas, the Award in I.D. No.10/2008, dated 17-3-2010 of the Labour Court, Puducherry in respect of the industrial dispute between the management of M/s. Francoise Xavier Bognoud India, Puducherry and Thiru P.Selvam over non-employment has been received;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947) read with the notification issued in Labour Department's G. O. Ms. No.20/91/Lab./L, dated 23-5-1991, it is hereby directed by Secretary to Government (Labour) that the said Award shall be published in the official gazette, Puducherry.

(By order)

G. MALAR KANNAN,
Joint Secretary to Government (Labour).

BEFORE THE LABOUR COURT AT PONDICHERRY

Present : Thiru E.M.K.S. SIDDHARTHAR, M.A., B.L.,
II Additional District Judge,
Presiding Officer, Labour Court,
Pondicherry.

Wednesday, the 17th day of March 2010.

I.D. No. 10/2008

P. Selvam . . . Petitioner.
Versus

The Managing Director,
Francoise Xavier Bagnoud India,
Puducherry . . . Respondent.

This industrial dispute coming on this day for hearing before me in the presence of Thiru R.S. Zivanandam, counsel for the petitioner, on the side of the respondent, no representation was made, upon perusing the case records, this court passed the following:

AWARD

This industrial dispute arises out of the reference made by the Labour Department, Government of Pondicherry *vide* G.O. Rt. No.80/AIL/Lab./J/2008, dated 5-5-2008 for adjudication of the following industrial dispute:—

(a) Whether the dispute raised by Thiru P. Selvam against the management of M/s. Francoise Xavier Bagnoud India, Puducherry over his non-employment is justified or not?

(b) To what relief, he is entitled to?

(c) To compute the relief if any, awarded in terms of money, if it can be so computed?

2. The matter was posted for appearance of the respondent to 2-9-2008, 24-10-2008, 24-11-2008, 22-1-2009, 19-2-2009, 9-4-2009, 4-6-2009, 2-7-2009, 23-7-2009, 6-8-2009, 10-9-2009, 22-10-2009, 26-11-2009, 10-12-2009, 17-12-2009, 7-1-2010, 21-1-2010, 4-2-2010 and 18-2-2010. But for the past 1½ years in 19 (nineteen) hearings, there was no representation from the respondent side. On 25-2-2010 the petitioner filed his chief proof affidavit and Ex.P1 to Ex.P13 satisfied. Claim proved. Hence, the industrial dispute is allowed and the respondent is hereby directed to reinstate the petitioner with full back wages and other attendant benefits from the date of his termination *i.e.* from 24-7-2006. However, there is no order as to costs.

Typed to my dictation, corrected and pronounced by me in the open court on this the 17th day of March 2010.

E.M.K.S. SIDDHARTHAR,
II Additional District Judge,
Presiding Officer,
Labour Court, Pondicherry.

List of witnesses marked for the petitioner :

PW1— 25-2-2010—Selvam

List of exhibits marked for the petitioner :

Ex.P1— Copy of the Appointment Order of the petitioner, dated 30-4-2005.

Ex.P2— Copy of the Employment Agreement of the petitioner, dated 2-7-2006.

- Ex.P3— Copy of the show cause memo. dated 2-3-2006.
- Ex.P4— Copy of the letter of the petitioner, dated 3-3-2006.
- Ex.P5— Copy of the termination order, dated 27-3-2006.
- Ex.P6— Appointment of an Advocate by Legal Services Authority, dated 29-6-2006.
- Ex.P7— Letter to Regional Director, dated 12-7-2006.
- Ex.P8— AD card signed by the respondent society.
- Ex.P9— AD card signed by the respondent society.
- Ex.P10— Reply letter of Regional Director, dated 24-7-2006.
- Ex.P11— Petition filed before Labour Officer, dated 3-10-2006.
- Ex.P12— Counter filed by the respondent before the Labour Officer, dated 19-10-2006.
- Ex.P13— Failure report, dated 5-12-2007.

E.M.K.S. SIDDHARTHAR,
II Additional District Judge,
Presiding Officer,
Labour Court, Pondicherry.

GOVERNMENT OF PUDUCHERRY
LABOUR DEPARTMENT

(G.O. Rt. No. 87/AIL/Lab./J/2010, dated 5th May 2010)

NOTIFICATION

Whereas, the Award in I.D. No. 47/2005, dated 2-3-2010 of the Labour Court, Puducherry in respect of the industrial dispute between the management of M/s. Pondicherry State Co-operative Sugar Mill Limited, Lingareddipalayam, Puducherry and Pudukkottai Pradesh Co-operative Sugar Mills Thozhilalargal Sangam (CITU) over non-payment of subsistence allowance to 4 workers has been received;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947) read with the notification issued in Labour Department's

G.O. Ms.No.20/91/Lab./L, dated 23-5-1991, it is hereby directed by Secretary to Government (Labour) that the said Award shall be published in the official gazette, Puducherry.

(By order)

G. MALAR KANNAN,
Joint Secretary to Government (Labour).

BEFORE THE LABOUR COURT AT PONDICHERRY

Present : Thiru E.M.K.S. SIDDHARTHAR, M.A., B.L.,
II Additional District Judge,
Presiding Officer, Labour Court,
Pondicherry.

Tuesday, the 2nd day of March 2010

I.D. No. 47/2005

The President,
Pudukkottai Pradesh Co-operative
Sugar Mill Thozhilalar Sangam CITU,
Pondicherry. Petitioner.

Versus

The Managing Director,
Pondicherry Co-operative Sugar
Mills Limited, Lingareddipalayam,
Pondicherry. Respondent.

This industrial dispute coming on 25-2-2010 for final hearing before me in the presence of Thiru Durai Arumugam, appearing for the petitioner, Thiru K. Palaniappaan and Mrs. R. Asvani Palaniappaan, Advocates for the respondent, upon hearing both sides, upon perusing the case records, this court passed the following:

AWARD

This industrial dispute arises out of the reference made by the Labour Department, Government of Pondicherry *vide* G.O. Rt. No.196/2005/Lab./AIL/J, dated 13-10-2005 for adjudication of the following industrial dispute that arose between the management of Pondicherry Co-operative Sugar Mills Limited and Pudukkottai Pradesh Co-operative Sugar Mill Thozhilalar Sangam:—

- (a) Whether the claim of the Pudukkottai Pradesh Kooturavu Sarkarai Alai Thozhilalargal Sangam (CITU) for payment of full wages by the management of M/s. Pondicherry State Co-operative Sugar Mills Limited, Lingareddipalayam to 1. R. Muthusamy, Pan Man (Seasonal employee), 2. G. Rajamoorthy, Assistant Pan Man, (Seasonal Employee),

3. G. Sankaran, Assistant Pan Man (Seasonal Employee) and 4. J. Thirumaran, Assistant Pan Man (Seasonal Employee) for the period of their suspension with effect from 1-2-2001 to 1-3-2001 on the ground that suspension has been revoked is correct? If so, to give appropriate directions?

2. When the industrial dispute was pending for counter, both parties filed a joint compromise memo. and as per the said compromise memo. the respondent management has withdrawn the disciplinary proceedings initiated against 1. R. Muthusamy, Pan Man, 2. G. Rajamoorthy, Assistant Pan Man, 3. G. Sankaran, Assistant Pan Man and 4. J. Thirumaran, Assistant Pan Man and consequently treated the period of their suspension from 1-2-2001 to 1-3-2001 as the period of service and the worker G. Rajamurthy has since retired. Further the respondent management has consequently agreed to pay 50% of the salaries, payable to the respective workers for the said period from 1-2-2001 to 1-3-2001 as claimed by the workers.

3. Hence, the industrial dispute is dismissed, in view of the compromise entered into between the said workers and the respondent management. The joint compromise memo. is part and parcel of this Award.

Typed to my dictation, corrected and pronounced by me in the open court, on this the 2nd day of March 2010.

E.M.K.S. SIDDHARTHAR,
II Additional District Judge,
Presiding Officer,
Labour Court, Pondicherry.

List of exhibits marked for the petitioner :

- Ex.A1— Copy of the notice, dated 28-1-2001.
- Ex.A2— Copy of the letter, dated 8-10-2001 written by Inquiring Authority to R. Muthusamy.
- Ex.A3— Copy of the letter, dated 20-11-2001 written by Inquiring Authority to R. Muthusamy.
- Ex.A4— Copy of recruitment rules of respondent company.
- Ex.A5— Pay slips of Muthusamy and Rajamurthy.

E.M.K.S. SIDDHARTHAR,
II Additional District Judge,
Presiding Officer,
Labour Court, Pondicherry.

GOVERNMENT OF PUDUCHERRY
DEPARTMENT OF PERSONNEL AND
ADMINISTRATIVE REFORMS (PERSONNEL WING)

No. A-34012/5/2008/DP&AR(Exam.).

Puducherry, the 11th May 2010.

NOTIFICATION

The following candidates are declared to have passed the Departmental Test for officers in Health Department held on 6-3-2010.

N.B. : (i) Names are given in alphabetical order.

(ii) Requests from unsuccessful candidates as to the cause of failure or revaluation of answer papers will not be complied with.

Sl. No.	Name and official address of the candidates
(1)	(2)

Thiruvallargal:

- 1 Adil Wafi, C. G., General Duty Medical Officer, Government General Hospital, Mahe.
- 2 Arokiam John Bosco, D. Specialist Grade-II in Ophthalmology, Government General Hospital, Mahe.
- 3 Mohammed Ishaque Shamir, K. K., General Duty Medical Officer, Government General Hospital, Mahe.

GIDDI MRUTHYUNJAYA DURGA RAO,
Under Secretary to Government.

GOVERNMENT OF PUDUCHERRY
LABOUR DEPARTMENT

(G.O. Rt. No. 102/AIL/Lab../J/2010, dated 12th May 2010)

NOTIFICATION

Whereas the Government is of the opinion that an industrial dispute has arisen between M/s. Soundararaja Mills Limited, Nedungadu and Soundararaja Mills Thozhilalar Nala Vazhvu Sangam, over non-payment of wages for the strike/lockout period during 2007 in respect of the matter mentioned in the Annexure to this order;

And whereas, in the opinion of the Government, it is necessary to refer the said dispute for adjudication;